

Exhibit S

Paul J. Riehle (SBN 115199)
 paul.riehle@faegredrinker.com
FAEGRE DRINKER BIDDLE & REATH LLP
 Four Embarcadero Center
 San Francisco, California 94111
 Telephone: (415) 591-7500
 Facsimile: (415) 591-7510

Christine A. Varney (*pro hac vice*)
 cvarney@cravath.com
 Katherine B. Forrest (*pro hac vice*)
 kforrest@cravath.com
 Gary A. Bornstein (*pro hac vice*)
 gbornstein@cravath.com
 Yonatan Even (*pro hac vice*)
 yeven@cravath.com
 M. Brent Byars (*pro hac vice*)
 mbyars@cravath.com

CRAVATH, SWAINE & MOORE LLP
 825 Eighth Avenue
 New York, New York 10019
 Telephone: (212) 474-1000
 Facsimile: (212) 474-3700

Attorneys for Plaintiff Epic Games, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

EPIC GAMES, INC.,

Plaintiff,

vs.

APPLE INC.,

Defendant.

No. 3:20-CV-05640-YGR

**DECLARATION OF KEVIN
 GAMMILL IN FURTHER SUPPORT
 OF PLAINTIFF EPIC GAMES, INC.'S
 MOTION FOR A TEMPORARY
 RESTRAINING ORDER AND ORDER
 TO SHOW CAUSE WHY A
 PRELIMINARY INJUNCTION
 SHOULD NOT ISSUE**

Date: August 24, 2020, 3:00 p.m.

Courtroom: 1, 4th Floor

Judge: Hon. Yvonne Gonzalez Rogers

1 I, Kevin Gammill, declare as follows:

2 1. I am the General Manager, Gaming Developer Experiences for Microsoft. In this
3 role, I oversee Microsoft's support of game creators (including game developers, audio engineers,
4 level designers, game producers, etc.) within the Xbox ecosystem. Among other things, my team
5 helps game creators achieve their creative goals. I have been an engineer for more than 30 years,
6 including more than 20 years at Microsoft, and have more than 10 years of experience supporting
7 game creators across multiple platforms.

8 2. Epic Games' *Unreal Engine* is critical technology for numerous game creators
9 including Microsoft.

10 (a) Game engines provide creators with a development environment that
11 delivers the necessary graphics, rendering, physics, sound, networking, and other technologies
12 that enable them to build games that run on multiple platforms.

13 (b) Although some large game creators choose to develop their own
14 proprietary game engines, many others, including small and independent game creators, utilize
15 game engines built by and licensed from third parties.

16 (c) Many of these creators do not have the resources or capabilities to build
17 their own game engines and rely on the availability of third-party game engines, while other
18 creators may choose to use third-party game engines to save development costs and utilize
19 already-developed technologies.

20 (d) As a result, Epic's *Unreal Engine* is one of the most popular third-party
21 game engines available to game creators, and in Microsoft's view there are very few other options
22 available for creators to license with as many features and as much functionality as *Unreal*
23 *Engine* across multiple platforms, including iOS.

24 (e) Microsoft has an enterprise-wide, multi-year *Unreal Engine* license
25 agreement and has invested significant resources and engineer time working with and
26 customizing *Unreal Engine* for its own games on PC, Xbox consoles, and mobile devices
27 (including iOS devices).

28 i. For example, Microsoft's racing game *Forza Street* is currently

1 available on iOS and utilizes *Unreal Engine*.

2 3. Denying Epic access to Apple's SDK and other development tools will prevent
3 Epic from supporting *Unreal Engine* on iOS and macOS, and will place *Unreal Engine* and those
4 game creators that have built, are building, and may build games on it at a substantial
5 disadvantage.

6 (a) Developing a game using different game engines for different platforms
7 may be prohibitively expensive and difficult. In any event, it is not as cost-effective as using a
8 game engine that supports different platforms.

9 (b) As a result, game creators, including Microsoft, that are preparing to
10 develop a game targeted at multiple platforms generally choose game engines based both on the
11 functionality they provide as well as their ability to support development for those platforms.

12 (c) If *Unreal Engine* cannot support games for iOS or macOS, Microsoft
13 would be required to choose between abandoning its customers and potential customers on the
14 iOS and macOS platforms or choosing a different game engine when preparing to develop new
15 games.

16 (d) Because iOS is a large and growing market for games, Apple's
17 discontinuation of *Unreal Engine*'s ability to support iOS will be a material disadvantage for the
18 *Unreal Engine* in future decisions by Microsoft and other game creators as to the choice of an
19 engine for new games.

20 (e) Even uncertainty about the *Unreal Engine*'s ability to continue supporting
21 iOS and macOS will make it less likely for Microsoft (and, I believe, other game creators) to
22 select *Unreal Engine* for their projects. When game creators are planning development projects,
23 which can last for years, it is important to have confidence that the chosen engine will continue to
24 be available on and support all platforms on which the game creators plan to distribute their
25 games.

26 4. Apple's discontinuation of Epic's ability to develop and support *Unreal Engine* for
27 iOS or macOS will harm game creators and gamers.

28 (a) For game creators in the later stages of development utilizing *Unreal*

1 *Engine* and targeting the iOS and/or macOS platform, *Unreal Engine*'s sudden loss of support for
2 iOS and macOS would create significant costs and difficult decisions. The creator would have
3 significant sunk costs and lost time using *Unreal Engine* for game creation, and would have to
4 choose between (a) starting development all over with a new game engine, (b) abandoning the
5 iOS and macOS platforms, or (c) ceasing development entirely.

6 (b) Apple's removal of *Unreal Engine*'s ability to develop updates and
7 improvements for iOS and macOS could also harm already-launched iOS and macOS games built
8 on *Unreal Engine*. If the game engine can no longer develop updates that take advantage of new
9 iOS or macOS features, fix software bugs, or patch security flaws, this will harm games that have
10 already launched on iOS and macOS (and, in turn, harm gamers). In addition, this situation could
11 bifurcate a game's player base, such that gamers on iOS or macOS cannot play or communicate
12 with friends or family who are playing on other platforms.

13
14 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true
15 and correct and that I executed this declaration on August 22, 2020 on Lopez Island, Washington.

16
17 
18

19
20
21
22
23
24
25
26
27
28
Kevin Gammill